

DURABLE POWER OF ATTORNEY FOR HEALTH CARE 23-06.5-04

6. "Health care provider" means an individual or facility licensed, certified, or otherwise authorized or permitted by law to administer health care, for profit or otherwise, in the ordinary course of business or professional practice.
7. "Long-term care facility" or "long-term care services provider" means a long-term care facility as defined in section 50-10.1-01.
8. "Principal" means an adult who is a resident of this state and who has executed a durable power of attorney for health care.

23-06.5-03. Scope and duration of authority.

1. Subject to the provisions of this chapter and any express limitations set forth by the principal in the durable power of attorney for health care, the agent has the authority to make any and all health care decisions on the principal's behalf that the principal could make.
2. After consultation with the attending physician and other health care providers, the agent shall make health care decisions:
 - a. In accordance with the agent's knowledge of the principal's wishes and religious or moral beliefs, as stated orally, or as contained in the durable power of attorney for health care or in declaration executed pursuant to chapter 23-06.4; or
 - b. If the principal's wishes are unknown, in accordance with the agent's assessment of the principal's best interests.
3. Under a durable power of attorney for health care, the agent's authority is in effect only when the principal lacks capacity to make health care decisions, as certified in writing by the principal's attending physician and filed in the principal's medical record.
4. The principal's attending physician shall make reasonable efforts to inform the principal of any proposed treatment, or of any proposal to withdraw or withhold treatment.
5. Nothing in this chapter permits an agent to consent to admission to a mental health facility, state institution, or security unit of a long-term care facility for a period of more than forty-five days without a mental health proceeding or other court order, or to psychosurgery, abortion, or sterilization, unless the procedure is first approved by court order.

23-06.5-04. Restrictions on who can act as agent. A person may not exercise the authority of agent while serving in one of the following capacities:

1. The principal's health care provider;
2. A nonrelative of the principal who is an employee of the principal's health care provider;

92-02
Date Approved 1/9/92
Effective Date 12/1/91
Continued on Page New

23-06.5-05

HEALTH AND SAFETY

3. The principal's long-term care services provider; or
4. A nonrelative of the principal who is an employee of the principal's long-term care services provider.

23-06.5-05. Execution and witnesses. The durable power of attorney for health care must be signed by the principal in the presence of at least two or more subscribing witnesses, neither of whom may, at the time of execution, be the agent, the principal's health or long-term care services provider or the provider's employee, the principal's spouse or heir, a person related to the principal by blood or adoption, a person entitled to any part of the estate of the principal upon the death of the principal under a will or deed in existence or by operation of law, or any other person who has, at the time of execution, any claims against the estate of the principal. The witnesses shall affirm that the principal appeared to be of sound mind and free from duress at the time the durable power of attorney for health care was signed and that the principal affirmed that the principal was aware of the nature of the documents and signed it freely and voluntarily. If the principal is physically unable to sign, the durable power of attorney for health care may be signed by the principal's name being written by some other person in the principal's presence and at the principal's express direction.

23-06.5-06. Acceptance of appointment — Withdrawal. To be effective, the agent must accept the appointment in writing. Subject to the right of the agent to withdraw, the acceptance creates a duty for the agent to make health care decisions on behalf of the principal at such time as the principal becomes incapable. Until the principal becomes incapable, the agent may withdraw by giving notice to the principal. After the principal becomes incapable, the agent may withdraw by giving notice to the attending physician. The attending physician shall cause the withdrawal to be recorded in the principal's medical record.

23-06.5-07. Revocation.

1. A durable power of attorney for health care is revoked:
 - a. By notification by the principal to the agent or a health care or long-term care services provider orally, or in writing, or by any other act evidencing a specific intent to revoke the power;
 - b. By execution by the principal of a subsequent durable power of attorney for health care; or
 - c. By the divorce of the principal and spouse, where the spouse is the principal's agent.

92-02

1/9/92

12/1/91

New

DURABLE POWER OF ATTORNEY FOR HEALTH CARE 23-06.5-10

2. A principal's health care or long-term care services provider who is informed of or provided with a revocation of a durable power of attorney for health care shall immediately record the revocation in the principal's medical record and notify the agent, the attending physician, and staff responsible for the principal's care of the revocation.

23-06.5-08. Inspection and disclosure of medical information.

Subject to any limitations set forth in the durable power of attorney for health care by the principal, an agent whose authority is in effect may for the purpose of making health care decisions:

1. Request, review, and receive any information, oral or written, regarding the principal's physical or mental health, including medical and hospital records;
2. Execute any releases or other documents which may be required in order to obtain such medical information;
3. Consent to the disclosure of such medical information.

23-06.5-09. Action by provider.

1. A principal's health care or long-term care services provider, and employees thereof, having knowledge of the principal's durable power of attorney for health care, are bound to follow the directives of the principal's designated agent to the extent they are consistent with this chapter and the durable power of attorney for health care.
2. If because of a moral or other conflict with a specific directive given by the agent, a principal's health care or long-term care services provider finds it impossible to follow that directive, the provider has the duty to inform the agent and if possible the principal, and take all reasonable steps to transfer care of the principal to another health care provider who is willing to honor the agent's directive.

23-06.5-10. Freedom from influence.

1. A health care provider, long-term care services provider, health care service plan, insurer issuing disability insurance, self-insured employee welfare benefit plan, or nonprofit hospital service plan may not charge a person a different rate or require any person to execute a durable power of attorney for health care as a condition of admission to a hospital or long-term care facility nor as a condition of being insured for, or receiving, health care or long-term care services. Health care or long-term care services may not be refused

92-02

1/9/90

12/1/91

New

23-06.5-11

HEALTH AND SAFETY

because a person has executed a durable power of attorney for health care.

2. A durable power of attorney for health care is not effective if, at the time of execution, the principal is a resident of a long-term care facility unless a recognized member of the clergy, an attorney licensed to practice in this state, or a person as may be designated by the department of human services or the county court for the county in which the facility is located, signs a statement affirming that the person has explained the nature and effect of the durable power of attorney for health care to the principal. It is the intent of this subsection to recognize that some residents of long-term care facilities are insulated from a voluntary decisionmaking role, by virtue of the custodial nature of their care, so as to require special assurance that they are capable of willingly and voluntarily executing a durable power of attorney for health care.
3. A durable power of attorney for health care is not effective if, at the time of execution, the principal is being admitted to or is a patient in a hospital unless a person designated by the hospital signs a statement that the person has explained the nature and effect of the durable power of attorney for health care to the principal.

23-06.5-11. Reciprocity. This chapter does not limit the enforceability of a durable power of attorney for health care or similar instrument executed in another state or jurisdiction in compliance with the law of that state or jurisdiction.

23-06.5-12. Immunity.

1. A person acting as agent pursuant to a durable power of attorney for health care may not be subjected to criminal or civil liability for making a health care decision in good faith pursuant to the terms of the durable power of attorney for health care and the provisions of this chapter.
2. A health care or long-term care services provider, or any other person acting for the provider or under the provider's control may not be subjected to civil or criminal liability, or be deemed to have engaged in unprofessional conduct, for any act or intentional failure to act done in good faith and with ordinary care if the act or intentional failure to act is done pursuant to the dictates of the durable power of attorney for health care, the directives of the patient's agent and the provisions of this chapter.

92-02

1/9/92

12/1/91

New

23-06.5-13. Guardianship authority — Conflicting declaration.

1. Unless a court of competent jurisdiction determines otherwise, a durable power of attorney for health care executed pursuant to this chapter takes precedence over any authority to make medical decisions granted to a guardian pursuant to chapter 30.1-28.
2. To the extent a durable power of attorney for health care conflicts with a declaration executed in accordance with chapter 23-06.4, the instrument executed later in time controls.

23-06.5-14. Liability for health care costs. Liability for the cost of health care provided pursuant to the agent's decision is the same as if the health care were provided pursuant to the principal's decision.

23-06.5-15. Validity of previously executed durable powers of attorney. This chapter does not affect the validity or enforceability of durable powers of attorney pertaining to health care executed before July 17, 1991.

23-06.5-16. Use of statutory form. The statutory form of durable power of attorney described in section 23-06.5-17 may be used and is the preferred form by which a person may execute a durable power of attorney for health care pursuant to this chapter. It is known as "the statutory form of durable power of attorney for health care".

23-06.5-17. Statutory form of durable power of attorney. The statutory form of durable power of attorney is as follows:

**STATUTORY FORM DURABLE POWER OF ATTORNEY FOR
HEALTH CARE
WARNING TO PERSON EXECUTING THIS DOCUMENT**

This is an important legal document which is authorized by the general laws of this state. Before executing this document, you should know these important facts:

You must be at least eighteen years of age and a resident of the state of North Dakota for this document to be legally valid and binding.

92-02

1/9/92

12/1/91

New

23-06.5-17

HEALTH AND SAFETY

This document gives the person you designate as your agent (the attorney in fact) the power to make health care decisions for you. Your agent must act consistently with your desires as stated in this document or otherwise made known.

Except as you otherwise specify in this document, this document gives your agent the power to consent to your doctor not giving treatment or stopping treatment necessary to keep you alive.

Notwithstanding this document, you have the right to make medical and other health care decisions for yourself so long as you can give informed consent with respect to the particular decision.

This document gives your agent authority to request, consent to, refuse to consent to, or to withdraw consent for any care, treatment, service, or procedure to maintain, diagnose, or treat a physical or mental condition if you are unable to do so yourself. This power is subject to any statement of your desires and any limitation that you include in this document. You may state in this document any types of treatment that you do not desire. In addition, a court can take away the power of your agent to make health care decisions for you if your agent authorizes anything that is illegal; acts contrary to your known desires; or where your desires are not known, does anything that is clearly contrary to your best interest.

Unless you specify a specific period, this power will exist until you revoke it. Your agent's power and authority ceases upon your death.

You have the right to revoke the authority of your agent by notifying your agent or your treating doctor, hospital, or other health care provider orally or in writing of the revocation.

Your agent has the right to examine your medical records and to consent to their disclosure unless you limit this right in this document.

This document revokes any prior durable power of attorney for health care.

You should carefully read and follow the witnessing procedure described at the end of this form. This document will not be valid unless you comply with the witnessing procedure.

If there is anything in this document that you do not understand, you should ask a lawyer to explain it to you.

Your agent may need this document immediately in case of an emergency that requires a decision concerning your health care. Either keep this document where it is immediately available to your agent and alternate agents, if any, or give each of them an executed copy of this document. You should give your doctor an executed copy of this document.

1. DESIGNATION OF HEALTH CARE AGENT. I, _____

(insert your name and address)

do hereby designate and appoint: _____

92-02
1/9/92
12/1/91
New

DURABLE POWER OF ATTORNEY FOR HEALTH CARE 23-06.5-17

(insert name, address, and telephone number of one individual only as your agent to make health care decisions for you. None of the following may be designated as your agent: your treating health care provider, a nonrelative employee of your treating health care provider, an operator of a long-term care facility, or a nonrelative employee of an operator of a long-term care facility.) as my attorney in fact (agent) to make health care decisions for me as authorized in this document. For the purposes of this document, "health care decision" means consent, refusal of consent, or withdrawal of consent to any care, treatment, service, or procedure to maintain, diagnose, or treat an individual's physical or mental condition.

2. **CREATION OF DURABLE POWER OF ATTORNEY FOR HEALTH CARE.** By this document I intend to create a durable power of attorney for health care.
3. **GENERAL STATEMENT OF AUTHORITY GRANTED.** Subject to any limitations in this document, I hereby grant to my agent full power and authority to make health care decisions for me to the same extent that I could make such decisions for myself if I had the capacity to do so. In exercising this authority, my agent shall make health care decisions that are consistent with my desires as stated in this document or otherwise made known to my agent, including my desires concerning obtaining or refusing or withdrawing life-prolonging care, treatment, services, and procedures.
(If you want to limit the authority of your agent to make health care decisions for you, you can state the limitations in paragraph 4, "Statement of Desires, Special Provisions, and Limitations", below. You can indicate your desires by including a statement of your desires in the same paragraph.)
4. **STATEMENT OF DESIRES, SPECIAL PROVISIONS, AND LIMITATIONS.** (Your agent must make health care decisions that are consistent with your known desires. You can, but are not required to, state your desires in the space provided below. You should consider whether you want to include a statement of your desires concerning life-prolonging care, treatment, services, and procedures. You can also include a statement of your desires concerning other matters relating to your health care. You can also make your desires known to your agent by discussing your desires with your agent or by some other means. If there are any types of treatment that you do not want to be used, you should state them in the space below. If you want to limit in any other way the authority given your agent by this document, you should state the limits in the space below. If you do not state any limits, your agent will have broad powers to make health care decisions for you, except to the extent that there are limits provided by law.)

In exercising the authority under this durable power of attorney for health care, my agent shall act consistently with my desires as

92-02
Approved 1/9/92
Effective Date 12/1/91
Transmittal New

23-06.5-17

HEALTH AND SAFETY

stated below and is subject to the special provisions and limitations stated below:

- a. Statement of desires concerning life-prolonging care, treatment, services, and procedures:

- b. Additional statement of desires, special provisions, and limitations regarding health care decisions:

(You may attach additional pages if you need more space to complete your statement. If you attach additional pages, you must date and sign EACH of the additional pages at the same time you date and sign this document.) If you wish to make a gift of any bodily organ you may do so pursuant to North Dakota Century Code chapter 23-06.2, the Uniform Anatomical Gift Act.

5. INSPECTION AND DISCLOSURE OF INFORMATION RELATING TO MY PHYSICAL OR MENTAL HEALTH. Subject to any limitations in this document, my agent has the power and authority to do all of the following:

- a. Request, review, and receive any information, verbal or written, regarding my physical or mental health, including medical and hospital records.

- b. Execute on my behalf any releases or other documents that may be required in order to obtain this information.

- c. Consent to the disclosure of this information.

(If you want to limit the authority of your agent to receive and disclose information relating to your health, you must state the limitations in paragraph 4, "Statement of Desires, Special Provisions, and Limitations", above.)

6. SIGNING DOCUMENTS, WAIVERS, AND RELEASES. Where necessary to implement the health care decisions that my agent is authorized by this document to make, my agent has the power and authority to execute on my behalf all of the following:

- a. Documents titled or purporting to be a "Refusal to Permit Treatment" and "Leaving Hospital Against Medical Advice".

- b. Any necessary waiver or release from liability required by a hospital or physician.

7. DURATION. (Unless you specify a shorter period in the space below, this power of attorney will exist until it is revoked.)

This durable power of attorney for health care expires on

(Fill in this space ONLY if you want the authority of your agent to end on a specific date.)

92-02

Date Approved 1/9/92Effective Date 12/1/91Signed and Transmitted NEW

DURABLE POWER OF ATTORNEY FOR HEALTH CARE 23-06.5-17

8. DESIGNATION OF ALTERNATE AGENTS. (You are not required to designate any alternate agents but you may do so. Any alternate agent you designate will be able to make the same health care decisions as the agent you designated in paragraph 1, above, in the event that agent is unable or ineligible to act as your agent. If the agent you designated is your spouse, he or she becomes ineligible to act as your agent if your marriage is dissolved. Your agent may withdraw whether or not you are capable of designating another agent.)

If the person designated as my agent in paragraph 1 is not available or becomes ineligible to act as my agent to make a health care decision for me or loses the mental capacity to make health care decisions for me, or if I revoke that person's appointment or authority to act as my agent to make health care decisions for me, then I designate and appoint the following persons to serve as my agent to make health care decisions for me as authorized in this document, such persons to serve in the order listed below:

a. First Alternate Agent: _____

(Insert name, address, and telephone number of first alternate agent.)

b. Second Alternate Agent: _____

(Insert name, address, and telephone number of second alternate agent.)

9. PRIOR DESIGNATIONS REVOKED. I revoke any prior durable power of attorney for health care.

DATE AND SIGNATURE OF PRINCIPAL
(YOU MUST DATE AND SIGN THIS POWER OF
ATTORNEY)

I sign my name to this Statutory Form Durable Power of Attorney For
Health Care on _____ at _____
(date) (city)

(state)

(you sign here)

(THIS POWER OF ATTORNEY WILL NOT BE VALID UNLESS IT IS
SIGNED BY TWO (2) QUALIFIED WITNESSES WHO ARE PRESENT
WHEN YOU SIGN OR ACKNOWLEDGE YOUR SIGNATURE. IF YOU
HAVE ATTACHED ANY ADDITIONAL PAGES TO THIS FORM, YOU
MUST DATE AND SIGN EACH OF THE ADDITIONAL PAGES AT THE
SAME TIME YOU DATE AND SIGN THIS POWER OF ATTORNEY.)

92-02
Date Approved 1/9/92
Effective Date 12/1/91
Supervisor/Trainer NEW

23-06.5-17

HEALTH AND SAFETY

STATEMENT OF WITNESSES

This document must be witnessed by two (2) qualified adult witnesses.
None of the following may be used as a witness:

1. A person you designate as your agent or alternate agent;
2. A health care provider;
3. An employee of a health care provider;
4. The operator of a long-term care facility;
5. An employee of an operator of a long-term care facility;
6. Your spouse;
7. A person related to you by blood or adoption;
8. A person entitled to inherit any part of your estate upon your death;
or
9. A person who has, at the time of executing this document, any claim
against your estate.

I declare under penalty of perjury that the person who signed or acknowledged this document is personally known to me to be the principal, that the principal signed or acknowledged this durable power of attorney in my presence, that the principal appears to be of sound mind and under no duress, fraud, or undue influence, that I am not the person appointed as attorney in fact by this document, and that I am not a health care provider; an employee of a health care provider; the operator of a long-term care facility; an employee of an operator of a long-term care facility; the principal's spouse; a person related to the spouse by blood or adoption; a person entitled to inherit any part of the principal's estate upon death; nor a person who has, at the time of executing this document, any claim against the principal's estate.

Signature: _____	Residence Address: _____
Print Name: _____	_____
Date: _____	_____
Signature: _____	Residence Address: _____
Print Name: _____	_____
Date: _____	_____

10. ACCEPTANCE OF APPOINTMENT OF POWER OF ATTORNEY.

I accept this appointment and agree to serve as agent for health care decisions. I understand I have a duty to act consistently with the desires of the principal as expressed in this appointment. I understand that this document gives me authority over health care decisions for the principal only if the principal becomes incapable. I understand that I must act in good faith in exercising my authority under this power of attorney. I understand that the principal may revoke this power of attorney at any time in any manner.

If I choose to withdraw during the time the principal is competent I must notify the principal of my decision. If I choose to withdraw when the principal is incapable of making the principal's health

92-02
1/9/92
Date 12/1/91
Transmittal New